



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA-HQ-OW-2009-0596; FRL- 9759-1]

RIN 2040-AF41

Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Proposed Rule; Stay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; proposed stay

SUMMARY: The Environmental Protection Agency (EPA) proposes to temporarily stay of our regulation the “Water Quality Standards for the State of Florida’s Lakes and Flowing Waters; Final Rule” (inland waters rule) to November 15, 2013. EPA’s inland waters rule currently includes an effective date of January 6, 2013, for the entire regulation except for the site-specific alternative criteria provision, which took effect on February 4, 2011. This proposed stay of its regulations is until November 15, 2013, does not affect or change the February 4, 2011, effective date for the site-specific alternative criteria provision.

DATES: Comments must be received on or before [INSERT DATE 14 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2009-0596, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. E-mail: ow-docket@epa.gov.
3. Mail to: Water Docket, U.S. Environmental Protection Agency, Mail code: 28221T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention: Docket ID No. EPA-HQ-OW-2009-0596.
4. Hand Delivery: EPA Docket Center, EPA West Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004, Attention Docket ID No. EPA-HQ-OW-2009-0596. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2009-0596. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyright material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Docket Facility. The Office of Water (OW) Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is 202-566-1744 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

FOR FURTHER INFORMATION CONTACT: For information concerning this rulemaking, contact: Tracy Bone, U.S. EPA, Office of Water, Mailcode 4305T, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460; telephone number 202-564-5257; email address: bone.tracy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

Does this Action Apply to Me?

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging nitrogen or phosphorus to lakes and flowing waters of Florida could be indirectly affected by this rulemaking because water quality standards (WQS) are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to lakes and flowing waters in the State of Florida.
Municipalities	Publicly-owned treatment works discharging pollutants to lakes and flowing waters in the State of Florida.
Stormwater Management Districts	Entities responsible for managing stormwater runoff in Florida.

This table is not intended to be exhaustive, but rather provides a guide for entities that may be affected by this action. Other types of entities not listed in the table, such as nonpoint source contributors to nitrogen and phosphorus pollution in Florida's waters may be indirectly affected through implementation of Florida's water quality standards program (i.e., through Basin Management Action Plans (BMAPs)). Any parties or entities conducting activities within watersheds of the Florida waters covered by this rule, or who rely on, depend upon, influence, or contribute to the water quality of the lakes and flowing waters of Florida, may be indirectly affected by this rule. To determine whether your facility or activities may be affected by this action, you should carefully examine the language in 40 CFR 131.43, which is the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

II. Background

On December 6, 2010, EPA's final inland waters rule, entitled "Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Final Rule," was published in the *Federal Register* at 75 FR 75761, and codified at 40 CFR 131.43. The final inland waters rule established numeric nutrient criteria in the form of total nitrogen, total phosphorus, nitrate+nitrite, and chlorophyll *a* for the different types of Florida's inland waters to assure attainment of the State's applicable water quality designated uses. More specifically, the numeric nutrient criteria translated Florida's narrative nutrient provision at Subsection 62–302.530(47)(b), Florida Administrative Code (F.A.C.), into numeric values that apply to lakes and springs throughout Florida and flowing waters outside of the South Florida Region. (EPA has distinguished the South Florida Region as those areas south of Lake Okeechobee and the Caloosahatchee River watershed to the west of Lake Okeechobee and the St. Lucie watershed to the east of Lake

Okeechobee.) The final inland waters rule seeks to improve water quality, protect public health and aquatic life, and achieve the long-term recreational uses of Florida's waters, which are a critical part of the State's economy.

Two portions of EPA's original inland waters rule – numeric nutrient criteria for Florida's streams and default downstream protection values (DPVs) for unimpaired lakes – were remanded to EPA on February 18, 2012 by the U.S. District Court for the Northern District of Florida (*FWF v. Jackson*, 4:08-cv-00324-RH-WCS). Per the terms of a Consent Decree, EPA is required to sign proposed criteria for these remanded portions by November 30, 2012 and to sign a notice of final rulemaking for such portions by August 31, 2013.

III. Stay of 40 CFR 11.43 (a) – (d)

A. Rationale for Staying 40 CFR 131.43 (a) – (d) until November 15, 2013

As stated in the rule itself (75 FR 75761, December 6, 2010), the inland waters rule was originally scheduled to take effect on March 6, 2012, except for the site-specific alternative criteria (SSAC) provision at 40 CFR 131.43(e), which took effect on February 4, 2011. However, after securing approval from the district court judge presiding over the Consent Decree, EPA published an extension of the March 6, 2012 effective date of the rule for four months to July 6, 2012 (77 FR 13497) to provide time for the Florida Department of Environmental Protection (FDEP) to adopt and submit its final nutrient rules to EPA for review and approval or disapproval under CWA section 303(c). FDEP officially submitted its final nutrient rules to EPA on June 13, 2012. On July 6, 2012 (77 FR 39949), after securing approval from the district court judge presiding over the Consent Decree, EPA published a six-month

extension of the July 6, 2012 effective date of the rule to January 6, 2013 in order to avoid the confusion and inefficiency that could occur should Federal criteria become effective while EPA reviewed the recently adopted and submitted State nutrient rules for approval or disapproval under CWA section 303(c).

FDEP's rules include numeric criteria for all freshwater lakes, all springs, some inland flowing waters, and certain estuaries, as well as narrative provisions addressing protection of downstream waters. EPA reviewed FDEP's nutrient rules, in conjunction with the supporting documentation provided, and approved FDEP's rules pursuant to section 303(c) of the CWA. EPA's approval letter is available at: http://www.epa.gov/lawsregs/rulesregs/florida_index.cfm

FDEP's numeric nutrient criteria apply to a subset of flowing waters covered by EPA's January 14, 2009 determination and the Consent Decree; therefore, EPA must propose federal criteria for those flowing waters not covered by FDEP's rule. In a separate action, EPA is re-proposing federal criteria that were remanded to EPA on February 18, 2012, that would apply only to those flowing waters not covered by Florida's newly approved water quality standards.

However, at this time, implementation of Florida's EPA-approved rules is unclear. A provision included in Florida's Rule, specifically subsection 62-302.531(9), F.A.C., casts some doubt as to whether the newly approved state water quality standards will go into effect if EPA proposes and promulgates numeric nutrient criteria for streams not covered by the State water quality standards. Therefore, it is unclear whether an EPA proposal to "gap fill," or establish numeric criteria for nutrients for Florida flowing waters that FDEP does not cover in its Rule, would trigger 62-302.531(9), F.A.C. and result in much of Florida's newly approved state water quality standards not taking effect. See 62-302.531(9), F.A.C. In addition, due to a recent

administrative challenge filed in the State of Florida Department of Administrative Hearings, there is uncertainty as to whether FDEP will be able to implement its newly approved state water quality standards consistent with FDEP's "Implementation of Florida's Numeric Nutrient Standards" (September 2012), a document describing how FDEP will implement its standards that EPA relied on in its approval.

This stay would provide EPA time to clarify implementation of Florida's rules approved by EPA under CWA section 303(c) and take corresponding final action on EPA's proposal for the remanded portions of the inland waters rule (streams and default downstream protection values (DPVs) for unimpaired lakes), for which a notice of final rulemaking action must be signed by August 31, 2013, and which EPA expects would take effect on or around November 15, 2013. In addition, the stay would provide EPA time to initiate rulemaking to withdraw the corresponding Federal criteria for freshwater lakes and springs if Florida's criteria for freshwater lakes and springs will be implemented by the State, e.g., if 62-302.531(9), F.A.C. is not triggered.

If, following consideration of public comment, EPA takes final action to stay these provisions, these provisions will be stayed until November 15, 2013. For more information on these actions, go to <http://www.epa.gov/region4/water/wqs/index.html>

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 *FR* 51735, October 4, 1993), since it merely stays certain sections of an already promulgated rule, and is therefore not subject to review under Executive Order 12866 and 13563 (76 *FR* 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action does not impose any information collection burden, reporting or record keeping requirements on anyone.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This proposed rule does not establish any requirements that are applicable to small entities, but rather merely stays certain sections of already promulgated requirements. Thus, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This proposed rule merely stays certain sections of an already promulgated regulation.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule does not establish any requirements that are applicable to small entities, but rather merely stays certain sections of already promulgated requirements.

E. Executive Order 13132 (Federalism)

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely stays certain sections of an already promulgated regulation.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement. This proposed rule will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law.

In the State of Florida, there are two Indian Tribes, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, with lakes and flowing waters. Both Tribes have been approved for treatment in the same manner as a State (TAS) status for CWA sections 303 and 401 and have federally approved WQS in their respective jurisdictions. These Tribes are not subject to this proposed rule. This rule will not impact the Tribes because it merely stays certain sections of already promulgated requirements.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866 and because the Agency does not believe this action includes environmental health risks or safety risks that would present a risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order (E.O.) 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income

populations in the United States. This action is not subject to E.O. 12898 because this action merely stays certain sections of already promulgated requirements.

List of Subjects in 40 CFR Part 131

Environmental protection, Florida, Nitrogen /phosphorus pollution, Nutrients, Water quality standards.

Dated: November 30, 2012

Lisa P. Jackson,
Administrator.

For the reasons set out in the preamble, 40 CFR part 131 is proposed to be amended as follows:

PART 131--WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

Subpart D—Federally Promulgated Water Quality Standards

2. Effective **[DATE OF PUBLICATION IN THE FEDERAL REGISTER OF FINAL RULE]**, 40 CFR 131.43(a) - (d) are stayed until November 15, 2013.

[FR Doc. 2012-29800 Filed 12/13/2012 at 8:45 am; Publication Date: 12/14/2012]